

STEWARTS



Jurisdiction: the Hague Convention and cross-border traffic accidents

What is the Hague regime? What are its limitations for cross-border traffic accident victims? What might the future hold?

Chris Deacon, Partner, Stewarts, London | Chair of PEOPIL EU-UK Working Group

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A Hague Convention on jurisdiction for cross-border traffic accidents?

> The short answer

- There is **no Hague convention specifically allocating jurisdiction** for cross-border traffic accidents.
- There is a Hague Conference project on jurisdiction, but it is narrowly focused and may yet not get any further off the ground.

> The existing Hague regime

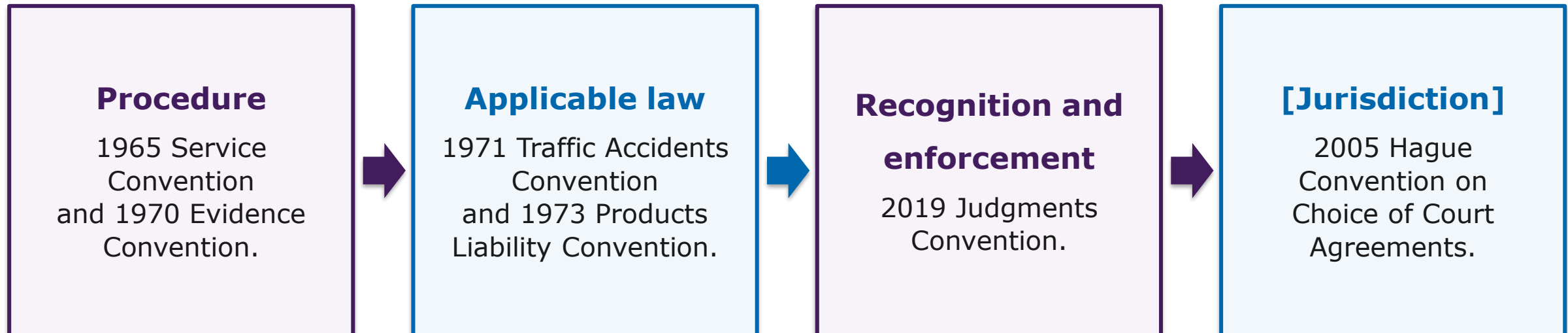
- Procedure, applicable law and enforcement are addressed through separate Hague instruments.
- Jurisdiction still depends on the rules of the forum, with the EU/EFTA States having a regime that is favourable to weaker parties in RTA and other scenarios.

> The difficulty for cross-border traffic accident victims

- Access to justice very often turns on forum (jurisdiction).
- Victims require a cohesive regime dealing with jurisdiction, applicable law and enforcement for legal certainty and effective redress.



What is the existing Hague Convention regime relevant to cross-border traffic accident victims?





Applicable law: what is the relevance of Hague 1971?

> It is in force in the following countries:

- Austria, Belarus, Belgium, Bosnia and Herzegovina, Croatia, Czech Republic, France, Latvia, Lithuania, Luxembourg, Montenegro, Morocco, Netherlands, North Macedonia, Poland, Serbia, Slovakia, Slovenia, Spain, Switzerland, Ukraine, (signed by Portugal but not in force).

> It prevails over Rome II for EU Member States who are signatories

- Harmonisation under Rome II has remained “partial at best” quoting a report by the EU Parliament’s JURI Committee.
- Art 28(1) of Rome II states that it: *“shall not prejudice the application of international conventions to which one or more Member States are parties at the time when this Regulation is adopted and which lay down choice-of-law rules relating to non-contractual obligations”*.
- Art 28(2) may say that Rome II may take precedence over conventions concluded exclusively between two or more Member States, but Hague 1971 does not fall into that category.



What does Hague 1971 say the applicable law should be?

> **Default rule**

- Favours *lex loci delicti*, like Rome II: ie the law of the State where the accident occurred.

> **Registration-based exceptions**

- Exception to the default rule for single vehicle accidents or where two or more vehicles are involved and they are registered in a different State to the one where the incident occurred, in which case the law of the country of registration is applicable.

> **Direct action**

- Makes provision for a direct right of action against the insurer if that is provided for by the applicable law; and also if the law of the State where the incident occurred provides for a direct right of action, even if the law of the State of registration (if that otherwise applies) does not provide for such a right.



Hague 1971 in practice - an illustrative example:

- › *Benny is driving his car in Germany; he is a French habitual resident. Benny overtakes a lorry being driven by Frida, which is not registered in France. Benny collides with a car travelling in the opposite direction carrying Bjorn and Agnetha, who, like Benny, are also habitually resident in France. Bjorn & Agnetha's car crashes into the lorry and they are killed. Their surviving siblings and parents bring a claim against Benny.*
 - » *They could bring the **claim in Germany**, and the German courts would apply **Rome II**, leading to **French law** pursuant to Art 4(2); or*
 - » *They could bring the **claim in France** where **Hague 1971** would apply and dictates that as there is a vehicle involved (the lorry - not necessarily at fault) that is not registered in France, **German law** should apply, potentially limiting the recoverable damages [Art 3 and 4(b) Hague 1971]..*



Product liability and applicable law: what is the relevance of Hague 1973 in a cross-border traffic accident?

- › **The rise of autonomous vehicles and new technologies?**
- › **Arguably slightly less relevant, as it is in force in a small number of countries:**
 - Croatia, Finland, France, Luxembourg, the Netherlands, Slovenia, and Spain, Norway, North Macedonia, Serbia, and Montenegro.
 - But: interplay with Rome II is the same as Hague 1971.
- › **Determines applicable based on:**
 - The habitual residence of the victim, if the defendant is also established there or the victim purchased the product there (note difference with Rome II which simply requires D to have marketed the product in C's place of habitual residence); or
 - The place of harm, provided other criteria satisfied relating to habitual residence of C / place of business of D / where product was acquired; or
 - Where the above are not met, the principal place of business of D, but C can opt for the law of the country where the harm occurred.



How does the Hague Judgments Convention 2019 help on enforcement in cross-border road traffic accidents?

> What is Hague 2019?

- An international convention providing a framework for recognition and enforcement of eligible civil and commercial judgments.

> Where does it apply?

- All **EU Member States**, except Denmark: from 1 September 2023
- **Ukraine**: from 1 September 2023
- **UK**: from 1 July 2025
- **Albania, Montenegro** (1 March 2026), **Andorra** (1 June 2026)
- Signed by **Russia and the USA** (as well as Costa Rica, Israel, Kosovo, North Macedonia) but not yet in force.



How does the Hague Judgments Convention 2019 help on enforcement in cross-border road traffic accidents?

> Why is it important?

- The number of signatories so far and its potential reach; the UK government's stated intention to fill the gaps left by Brexit in the field of judicial cooperation in civil and commercial matters through the Hague regime.

> What does it not do?

- It does not deal with jurisdiction, self-evidently, so is not a complete package for weaker parties who fall through the gaps of other international regimes, notably the EU/EFTA regime on jurisdiction and enforcement.
- It has a number of notable limitations more generally.

What are the limitations of Hague 2019 to cross-border road traffic accidents?

- › Excludes **carriage of passengers and goods**
 - Article 2(1)(f).
 - A passenger claim may fall outside Hague 2019 while a pedestrian claim from the same collision may be treated differently.

- › Excludes **interim measures**
 - Article 3.1(b).
 - Interim damages.
 - Preliminary steps eg relating to disclosure or specific information.

What are the limitations of Hague 2019 to cross-border road traffic accidents?

- › **Article 5(1)(j)** requires the act or omission **directly causing the harm to have occurred in the State of origin**.
 - » **The tort gateway**
 - Increasingly relied upon by serious injury victims in E&W courts following a road traffic accident overseas.
 - Although there is arguably some ambiguity in the drafting of Hague 2019, the explanatory notes make clear that a judgment emanating from a claim brought pursuant to the tort gateway would be excluded.
 - » **Indirect loss in a fatal damages claim**
 - It appears to arbitrarily exclude enforcement of a judgment obtained by a claimant who is bringing a claim for loss of financial dependency following a fatal accident and/or potentially secondary victims, on the basis this is an 'indirect' loss;
 - The approach in the Explanatory Notes is that the question of interpretation of this part of Hague 2019 should be left to national courts.



What are the limitations of Hague 2019 to road traffic accidents?

> Public policy

- Article 7
- Recognition may be refused on grounds including **manifestly incompatible with public policy**.

> Parallel proceedings

- Recognition or enforcement may be refused if a judgment is **inconsistent with a judgment given by the court of the requested State** in a dispute between the same parties OR **inconsistent with a judgment given by another State** between the same parties on the same subject matter.
- Recognition or enforcement may be postponed or refused where **proceedings are pending in the requested State** between the same parties on the same subject matter where the court of **the requested State was seised** before the court of origin **and** there is **a close connection** between the dispute and the requested State.

> Consent orders?

- Should in theory be enforceable pursuant to Hague 2019 through relying on a combination of Articles 4 & 5.



What does the future hold for the Hague Conventions and road traffic accidents?





References

- › Convention of 4 May 1971 on the Law Applicable to Traffic Accidents: <https://www.hcch.net/en/instruments/conventions/full-text/?cid=81>
- › Convention of 2 October 1973 on the Law Applicable to Products Liability: <https://www.hcch.net/en/instruments/conventions/full-text/?cid=84>
- › Rome II Regulation: [Regulation - 864/2007 - EN - Rome II Regulation - EUR-Lex](#)
- › **Journal of Personal Injury Law**, 2014 *Crossing borders: what happens when Rome meets the Hague* by Antoinette Collignon-Smit Sibinga
- › EU Study for the JURI Committee on Cross-border traffic accidents in the EU – the potential impact of driverless cars: [https://www.europarl.europa.eu/RegData/etudes/STUD/2016/571362/IPOL_STU\(2016\)571362_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2016/571362/IPOL_STU(2016)571362_EN.pdf)
- › 2009 Report on COMPENSATION OF VICTIMS OF CROSS-BORDER ROAD TRAFFIC ACCIDENTS IN THE EU: COMPARISON OF NATIONAL PRACTICES, ANALYSIS OF PROBLEMS AND EVALUATION OF OPTIONS FOR IMPROVING THE POSITION OF CROSS-BORDER VICTIMS: [report-compensation-cross-border-victims-29012009_en.pdf](#)
- › Convention of 2 July 2019 on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters: [HCCH | #41 - Full text](#) and Explanatory Report [HCCH | Explanatory Report on the 2019 HCCH Judgments Convention](#)
- › Hague Jurisdiction Project : [HCCH | Jurisdiction Project](#)

STEWARTS

5 New Street Square
London
EC4A 3BF

Tel: +44 (0)20 7822 8000

9 Bond Court
Leeds
LS1 2JZ

Tel: +44 (0)113 222 0022

www.stewartslaw.com